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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MIGUEL et al.,

Plaintiffs,

v.

SALEFORCE.COM, INC., et al.,

Defendants.

Case No. 3:20-cv-01753-MMC

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES
AND CASE CONTRIBUTION
AWARDS AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: April 4, 2025
Final Fairness Hearing
Time: 9:00 a.m.
Location: San Francisco
Courthouse
Courtroom 7
19th Floor
450 Gold Gate Avenue
San Francisco, CA 95113
Judge: Hon. Maxine Chesney

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that with the Fairness Hearing scheduled for April 4, 2025, at 9:00 a.m., Plaintiffs, Gregor Miguel, Amanda Bredlow, Chris Simonelli, David Villarreal, Joseph Douillard, Marc Runyard, Mark Tracey and Robert Ramirez, (collectively, “Plaintiffs”), on behalf of the proposed Settlement Class and the Salesforce 401(k) Plan (the “Plan”), hereby respectfully move this Court, pursuant to Federal Rules of Civil Procedure 23, for an Order:

1. Awarding attorneys’ fees to Class Counsel in the amount of \$449,955.00, which represents approximately 33-1/3% of the Settlement Amount;

2. Directing reimbursement of expenses to Class Counsel in the amount not to exceed \$150,000.00 of expenses incurred in the prosecution of the action;

3. Awarding a case contribution award of \$10,000 each to Plaintiffs, Gregor Miguel and Amanda Bredlow;

4. Awarding a case contribution award of \$7,500 each to Plaintiffs, Chris Simonelli, David Villarreal, Joseph Douillard, Marc Runyard, Mark Tracey, and Robert Ramirez, and;

5. For such other relief as the Court may deem just and proper.

A Proposed Order is submitted hereto. The grounds for this Motion for an Award of Attorneys Fees and Reimbursement of Expenses and Case Contribution Awards are set forth in the below Memorandum of Points and Authorities in Support thereof, the attached Declaration of Mark K. Gyandoh in Support and supporting papers, as well as the Declarations of Plaintiffs, Gregor Miguel, Amanda Bredlow, Chris Simonelli, David Villarreal, Joseph Douillard, Marc Runyard, Mark Tracey, and Robert Ramirez, the record in this litigation, and any other matters the Court may

PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES AND CASE CONTRIBUTION AWARDS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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1 consider. Plaintiffs respectfully submit that the requested fees and costs were reasonable and
2 necessary for the prosecution of this case and should be approved.

3
4 Dated: November 25, 2024

Respectfully submitted,

5 **CAPOZZI ADLER, P.C.**

6 /s/ Mark K. Gyandoh

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28 REIMBURSEMENT OF EXPENSES AND CASE CONTRIBUTION AWARDS AND MEMORANDUM OF
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs, Gregor Miguel, Amanda Bredlow, Chris Simonelli, David Villarreal, Joseph Douillard, Marc Runyard, Mark Tracey and Robert Ramirez, (together, “Plaintiffs”), by and through their undersigned counsel on behalf of the Salesforce 401(k) Plan (the “Plan”) respectfully submit this Notice of Motion and Memorandum in Support for an Award of Attorneys’ Fees and Reimbursement of Expenses and Case Contribution Awards.

On August 23, 2024, the Court preliminarily approved the Settlement in this Action (ECF No. 189), which provides for the creation of a \$1,350,000 Settlement Fund. The Court’s Preliminary Approval Order also conditionally certified a Settlement Class and appointed the Named Plaintiffs as class representatives and Capozzi Adler, P.C (“Capozzi Adler”) as Class Counsel for the Settlement Class. In preliminarily approving the Settlement, the Court consolidated the two actions pending against Defendants: *Miguel, et. al. v. Salesforce.com, Inc. et al.*, 3:20-cv-01753 and *Simonelli, et. al. v. Salesforce.com, Inc. et. al.*, 24-cv-00813.

The Settlement represents roughly 13.5% of the roughly \$10 million potential best-case damages for both actions as calculated by Plaintiffs. *See* Declaration of Mark K. Gyandoh in support of the instant motion (“Gyandoh Decl.”), ¶¶ 62, 72. This Settlement was achieved after over four years of litigation and vigorous arms-length negotiations between Plaintiffs’ and Defense counsel, both experienced in ERISA counsel, up to the eve of trial.

Plaintiffs request an award of attorneys’ fees of thirty-three and one third percent (33.3%) of the Settlement Amount, which equates to \$449,955.00. Courts around the country routinely award

counsel fees of 33.3% in analogous class actions brought under ERISA.¹ Resolving the Action at this juncture allows the Parties to avoid continued and costly litigation (including potential appeals) that would deplete resources which could otherwise be used for the resolution of the Action, and which could result in a recovery less than that provided by the Settlement, or no recovery at all. In addition, Plaintiffs also request reimbursement of out-of-pocket costs and expenses incurred in connection with the prosecution of this Action in the amount of \$150,000, which is less than the amount of expenses actually incurred. Class Counsel also asks the Court to approve the payment of Case Contribution Awards the amount \$10,000 to Plaintiffs Gregor Miguel and Amanda Bredlow, and in the amount of \$7,500 to Plaintiffs Chris Simonelli, David Villarreal, Joseph Douillard, Marc Runyard, Mark Tracey and Robert Ramirez, in recognition of their contributions to this Action.

II. BACKGROUND²

¹ See, e.g., *Karpik v. Huntington Bancshares Inc.*, No. 17-cv-1153, 2019 WL 7482134, at *7 (S.D. Ohio Feb. 18, 2021); *Griffin v. Flagstar Bancorp, Inc.*, No. 10-cv-10610, 2013 WL 6511860, at *8 (E.D. Mich. Dec. 12, 2013); *Pledger v. Reliance Trust Co.*, No. 15-cv-4444, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-cv-22782, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017); *Kelly v. Johns Hopkins Univ.*, No. 16-cv-2835, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020); *Marshall v. Northrop Grumman Corp.*, No. 16-cv-6794, 2020 WL 5668935, at *3 (C.D. Cal. Sep. 18, 2020); *Tussey v. ABB, Inc.*, No. 06-cv-04305, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-cv-02062, 2019 WL 4193376 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke Univ.*, No. 16-cv-1044, 2019 WL 2579201 (M.D.N.C. June 24, 2019); *Cates v. Trustees of Columbia Univ.*, No. 16-cv-06524, 2021 WL 4847890 (S.D.N.Y. Oct. 18, 2021); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 270 (S.D.N.Y. 2020) (listing ERISA cases awarding one-third of settlement fund); *Ramos v. Banner Health*, No. 15-cv-2556, 2020 WL 6585849, at *4-5 (D. Colo. Nov. 10, 2020); *Schapker v. Waddell & Reed Fin., Inc.*, No. 17-cv-2365 (Final Approval Order and Judgment) (D. Kan. Apr. 8, 2019); *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 19-cv-05738, 2021 WL 5609864, at *2 (E.D. Pa. June 11, 2021); *Hay v. Gucci America, Inc.*, No. 17-cv-7148 (D.N.J.); *Spano v. Boeing Co.*, No. 06-cv-0743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016); *Troudt et al. v. Oracle Corp., et al.*, No. 1:16-cv-00175 (Order Granting Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees, Expenses, and Incentive Awards) ("Troudt Fee Order") (D. Colo. July 10, 2020); *Donald v. Teachers Insurance and Annuity Insurance Ass'n of America*, No. 15-cv-08040 (S.D.N.Y.).

² See also Gyandoh Decl., ¶¶ 3-68 (detailing the procedural history, discovery practice, settlement negotiations, and settlement terms).

1 Following several months of investigation, Plaintiffs, Participants in the Plan, filed the First
2 Amended Complaint (“FAC”) (ECF No. 38), in *Miguel, et. al. v. Salesforce.com, Inc. et al.*
3 (“*Miguel Action*”) on October 23, 2020. Plaintiffs allege that Defendants are fiduciaries of the Plan
4 and breached duties owed to the Plan and its participants and beneficiaries by: (1) failing to
5 objectively and adequately review the Plan’s investment portfolio with due care to ensure that each
6 investment option was prudent, in terms of cost; and (2) maintaining certain funds in the Plan
7 despite the availability of identical or similar investment options with lower costs and/or better
8 performance histories. *Id.* at ¶10.

10 Over the ensuing four years, both parties vigorously litigated the case. *See* Gyandoh Decl.,
11 ¶¶ 3-57. Defendants filed motions to dismiss Plaintiffs’ first two Complaints, both of which the
12 Court granted. (ECF Nos. 35, 55). Plaintiffs appealed the second dismissal to the 9th Circuit, which
13 reversed the decision. (ECF No. 59). Plaintiffs then won an opposed motion for class certification.
14 (ECF No. 96). Defendants filed a motion for summary judgment, and a motion to exclude Plaintiffs’
15 expert, both of which Plaintiffs defeated. (ECF Nos. 140, 141). The parties also engaged in full
16 discovery. Gyandoh Decl., ¶¶ 45-57. Plaintiffs reviewed thousands of pages of documents produced
17 by Defendants. *Id.* at ¶¶ 53. Plaintiffs also defended the depositions of Plaintiffs Miguel and
18 Bredlow and took the depositions of three defense fact witnesses. *Id.* at ¶¶ 54-55. Defendants
19 engaged two expert witnesses, both of whom Plaintiffs deposed after reviewing their opening and
20 rebuttal reports. *Id.* at ¶¶ 56-57. Plaintiffs engaged one expert witness who also issued an opening
21 and rebuttal report and was deposed by Defendants. *Id.* Plaintiffs were fully prepared to try this
22 case. This preparation included identifying trial exhibits and witnesses, filing a joint pretrial
23 statement, and preparing demonstrative exhibits and witness examinations. *Id.* at ¶ 41.

On February 9, 2024, Plaintiffs filed *Simonelli, et. al. v. Salesforce.com, Inc. et. al.* (“*Simonelli* Action”) in the Northern District of California alleging that Defendants breached their fiduciary duties by retaining certain underperforming funds in the Plan and permitting the Plan to pay excessive recordkeeping fees. (See Dkt. No. 1, Class Action Complaint (“CAC”) at ¶¶ 93-165). On April 5, 2024, the Court stayed the *Simonelli* Action pending resolution of the *Miguel* Action. (ECF. No. 34).

The *Miguel* Action was listed for trial on May 6, 2024. Upon further direct negotiations between the Parties, they reached an agreement to settle both the *Miguel* and *Simonelli* Actions on the literal eve of trial. See Gyandoh Decl., ¶¶ 42, 59.

III. STANDARD OF REVIEW

Under FED. R. CIV. P. 23, “the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the Parties’ agreement.” FED. R. CIV. P. 23(h). Such fees must be found “fair, reasonable, and adequate” in order to be approved. FED. R. CIV. P. 23(e). “It is well established that a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys’ fees.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (quoting *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)) (internal quotation marks omitted). “Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (citing *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir.2010)). In the Ninth Circuit, the percentage method is the prevailing method by which district courts assess and award fees from a

1 common fund in class action litigation. *See Omnivision*, 559 F. Supp. 2d at 1046. Regardless of the
 2 method used, the Ninth Circuit requires only that fee awards in common fund cases be reasonable
 3 under the circumstances. *State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990).

4 Courts determining fee awards using the percentage method generally look to the following
 5 factors:

- 6 (1) the results achieved;
- 7 (2) the risk of litigation;
- 8 (3) the skill required and the quality of work;
- 9 (4) the contingent nature of the fee and the financial burden carried by the plaintiffs [and
 class counsel]; and
- 10 (5) awards made in similar cases.

11 *See Omnivision*, 559 F. Supp. 2d at 1046. For the reasons stated below, the requested attorneys' fees
 12 are fair and reasonable under the circumstances of this matter.

13 **IV. ARGUMENT**

14 **A. Plaintiffs' Request for Attorneys' Fees Is Reasonable**

15 **1. The Settlement is an Excellent Result**

16
 17 "The overall result and benefit to the class from the litigation is the most critical factor in
 18 granting a fee award." *See Omnivision*, 559 F. Supp. 2d at 1046. Class Counsel's efforts have
 19 created a \$1,350,000.00 Gross Settlement Amount which is an excellent result when viewed in any
 20 light. Plaintiffs estimated that the maximum supportable damages for both actions were roughly
 21 \$10,000,000. *See Gyandoh Decl.*, ¶ 72. The Settlement provides a recovery of 13.5% of the
 22 estimated maximum supportable losses. *Id.* This result is well within the range of settlement
 23 recoveries approved in ERISA class actions in the 9th Circuit. *See In re Mego Fin. Corp. Sec.*
 24 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding fair and adequate an ERISA settlement
 25

1 representing one-sixth, or 16% of recovery); *Cheng Jiangchen v. Rentech, Inc.*, No. 17-1490-GW,
 2 2019 WL 5173771, at *7 (C.D. Cal. Oct. 10, 2019) (approving fees in settlement of 10% of
 3 maximum damages); *Reyes v. Bakery & Confectionery Union & Indus. Int’l Pension Fund*, 2017
 4 WL 6623031, at *6 (N.D. Cal. Dec. 28, 2017) (approving ERISA settlement recovery of 25% of
 5 possible damages); *Omnivision*, 559 F. Supp. 2d at 1046 (finding recovery of 9% of possible
 6 damages to be substantial based on average recovery in similar litigation, such that requested fee
 7 award above benchmark was warranted); *Deaver v. Compass Bank*, No. 13-CV-00222-JSC, 2015
 8 WL 8526982, at *7 (N.D. Cal. Dec. 11, 2015) (approving fees in settlement of 10.7% of maximum
 9 damages); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-CV-02540-HSG, 2015 WL 3776765, at
 10 *4 (N.D. Cal. June 17, 2015) (concluding that a settlement which provided 10% of the potential
 11 recovery was “within the range of reasonableness in light of the risks and costs of litigation”); *Ma*
 12 *v. Covidien Holding, Inc.*, No. 12– 02161, 2014 WL 360196, at *5 (C.D. Cal. Jan. 31, 2014)
 13 (finding a settlement worth 9.1% of the total value of the action “within the range of
 14 reasonableness”); *Balderas v. Massage Envy Franchising, LLC*, No. 12–cv–06327 NC, 2014 WL
 15 3610945, at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval of a net settlement
 16 amount representing 5% of the projected maximum recovery at trial).
 17
 18

19 The Settlement here is an excellent result for the Plaintiffs and the Class.

20 2. Continued Litigation Posed a Substantial Risk

21
 22 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly a
 23 case involving complicated legal issues, is a significant factor in the award of fees.” *See*
 24 *Omnivision*, 559 F. Supp. 2d at 1046 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th
 25 Cir. 2002)). While Plaintiffs were confident in their case and were fully prepared to proceed to
 26

1 trial, like in *Omnivision*, this case was complex, involving several fact and expert witnesses.
2 Prevailing on the merits in complex cases such as this was by no means guaranteed, regardless of
3 Counsel's preparations. Defense Counsel is experienced in ERISA litigation, had aggressively
4 litigated the case up to trial, and undoubtedly would have tried the case in the same manner.
5

6 Likewise, even if Plaintiffs prevailed on liability at trial, there was no guarantee that the
7 Court would award damages or, if it did, that those damages would equal or exceed the amount of
8 the Settlement. *Urakhchin*, 2018 WL 8334858, at *6 ("ERISA 401(k) litigation is risky and even
9 had Plaintiffs prevailed on the merits, there would be significant uncertainty as to a damage award
10 following trial."). Further, had Plaintiffs prevailed, Defendants almost certainly would have
11 appealed the decision, resulting in further delay, risk, and expenses. The Settlement represents a
12 reasonable compromise that alleviates the risks associated with further litigation.
13

14 **3. Plaintiffs Skillfully Litigated the Case to the Eve of Trial**

15 The third factor considers the "the skill required and the quality of work." *See Omnivision*,
16 559 F. Supp. 2d at 1046. Plaintiffs' Counsel demonstrated considerable skill litigating the case over
17 the course of four years to the eve of trial. It is well understood that ERISA claims, such as the
18 claims here, are particularly complex. *See Toumajian v. Frailey*, 135 F.3d 648, 650 (9th Cir. 1998)
19 ("Once again the mysteries of the Employee Retirement Income Security Act of 1974 ("ERISA") -
20 a statute intended to provide a system of uniformity and simplicity in the complex regulatory field
21 of employee benefits - provides added complexity in this action."). Plaintiffs retained attorneys who
22 are highly qualified, experienced, and able to litigate this matter. Capozzi Adler and Mark K.
23 Gyandoh, Plaintiffs' Counsel in this Action, readily meet these criteria. Capozzi Adler has been
24 named Lead or Co-Lead interim Class Counsel in numerous breach of fiduciary duty class actions
25
26

1 in this District and across the nation and has settled multiple ERISA actions for millions of dollars.
2 *See* Gyandoh Decl., ¶¶ 103, 105. Mr. Gyandoh, chair of the Fiduciary Practice Group at Capozzi
3 Adler, is a highly qualified ERISA class action attorney and unequivocally recommends this
4 Settlement. *Id.* at ¶¶ 97-98.

5
6 These cases often require multiple experts on both sides to opine on issues of liability and
7 damages, and this case was no exception with Plaintiffs engaging one expert and Defendants
8 rebutting with two experts. Plaintiffs' Counsels' extensive experience in navigating the complex
9 ERISA statutory and regulatory framework allowed them to work effectively with their expert to
10 support their claims and analyze and critique Defendants' experts' opinions and testimony. *See*
11 Gyandoh Decl., ¶¶ 103-105.

12
13 Plaintiffs' Counsel demonstrated their skill at every stage of this litigation. Counsel engaged
14 in extensive pre-filing investigation and filed detailed pleadings, including initial and amended
15 Complaints. (ECF 1, 38). Class Counsel effectively navigated the discovery process to develop an
16 extensive record, including reviewing thousands of pages of documents and taking and defending
17 eight depositions. *See* Gyandoh Decl., ¶¶ 45-57. Likewise, Plaintiffs' counsel prevailed in several
18 pretrial motions, including an appeal to the 9th Circuit reversing an adverse decision on a motion to
19 dismiss (ECF No. 59), an opposed motion for class certification (ECF No. 96), a motion for
20 summary judgment (ECF No. 140), and a motion to exclude Plaintiffs' expert witness (ECF No.
21 141).

22
23 Shepherding this case to the eve of trial against skilled adversaries is a testament to the
24 quality of representation Class Counsel provided to the Plaintiffs and the Class. *See* Gyandoh Decl.
25 ¶ 71; *see also*, *Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-CV-01892, 2021 WL

1 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (“[Class counsel’s fee]is reasonable because this complex
2 case, settled on the eve of trial after more than four years of extensive litigation, demanded a
3 substantial amount of motion practice, investigation, discovery, and mediation. ... Class Counsel
4 are experienced ERISA practitioners who performed their work here competently, shepherding this
5 complicated case through summary judgment before reaching settlement”).

6
7 **4. Plaintiffs’ Counsel Worked on a Contingent Fee Basis and Advanced
All Costs**

8
9 The fourth factor considers “the contingent nature of the fee and the financial burden carried
10 by the plaintiffs [and class counsel].” *See Omnivision*, 559 F. Supp. 2d at 1046. “The importance of
11 assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys
12 justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than
13 if they were billing by the hour or on a flat fee.” *Omnivision*, 559 F. Supp. 2d at 1047; *see also*
14 *Urakhchin*, 2018 WL 8334858, at *6 (citing cases).

15
16 Class Counsel took this case on a wholly contingent basis. *See Gyandoh Decl.*, ¶ 70, 73. The
17 economical and logistical unattractiveness of this case required a legal team with significant
18 expertise in ERISA class action litigation who could manage this case in a cost-effective and
19 comprehensive way. The Plaintiffs would not have been able to pursue this litigation other than on a
20 contingency fee basis and no competent plaintiffs’ lawyer or law firm would take on such risky
21 representation for less than one-third of any monetary recovery. *See Gyandoh Decl.*, ¶ 85. Class
22 Counsel effectively and efficiently litigated this action from its inception. In that time, Class
23 Counsel has never been paid for their work on this matter, taking the case on a wholly contingent
24 basis.

1 Plaintiffs' counsel devoted a total of 2,128.5 hours to litigating these cases over a four-year
 2 period. *See* Gyandoh Decl., ¶ 83. During that time, they faced the very real risk, in the face of
 3 staunch opposition from highly qualified Defense counsel, that they would receive nothing for this
 4 professional time and cash outlay. *Id.* at ¶ 70. Many courts find this factor weighs in favor of
 5 approving the requested fee. *See Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-CV-01892,
 6 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) ("Class Counsel ran the risk of receiving nothing
 7 if the case was unsuccessful because they operated on a contingent-fee basis and advanced all
 8 litigation costs.").

10 In addition, compared to other settled ERISA cases, Plaintiffs' Counsel litigated this case
 11 extremely efficiently. *See Marshall*, at 2020 WL 5668935, at *3 (plaintiffs' counsel billed over
 12 26,000 hours to litigate case up to trial); *Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-CV-
 13 01892, 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (plaintiffs' counsel billed over 17,000
 14 hours to litigate case to summary judgment); *Foster*, 2022 WL 425559 at *9 (plaintiffs' counsel
 15 billed over 3,800 hours up to trial); *Hurtado*, 2021 WL 2327858, at *5 (plaintiffs' counsel billed
 16 over 3,500 hours to litigate case to the close of discovery).

18 As reflected by the sheer number of hours devoted by the attorneys and staff involved in
 19 litigating this case, a substantial amount of their time was devoted to this case at the preclusion of
 20 other work. *See* Gyandoh Decl. ¶ 83. While not a specific factor considered in the Ninth Circuit, this
 21 consideration is relevant in terms of taking this case on a contingent fee basis. *See e.g., Shaw v.*
 22 *Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015)
 23 ("[t]here is an inherent preclusion of other work in litigating a complex case such as this on a
 24 contingency fee basis.").

1 Class Counsels’ risk of nonpayment in light of these efforts merits the requested fee and
 2 expenses award. *See Omnivision*, 559 F. Supp. 2d at 1047 (awarding requested fees and expenses
 3 where counsel had devoted 7,500 hours and advanced in excess of \$500,000 in expenses in
 4 securities litigation lasting three years).

5. The Fees and Costs Sought are Proportional to those in Similar Cases

6 The fifth factor considers awards granted in other similar cases. *See Omnivision*, 559 F.
 7 Supp. 2d at 1046. Although the Ninth Circuit has established a general benchmark of 25% in
 8 contingent fee litigation, courts in this District have noted that “in most common fund cases, the
 9 award exceeds that benchmark.” *See Omnivision*, 559 F. Supp. 2d at 1047. Indeed, courts in this
 10 district have deviated from the 25% in ERISA cases like this case. *See Baird v. BlackRock*
 11 *Institutional Tr. Co., N.A.*, No. 17-CV-01892, 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021)
 12 (“[29%] is higher than the presumptively reasonable benchmark amount of 25%, but in this case,
 13 the Court finds that the higher percentage is reasonable and justified”).
 14

15 In class actions brought under ERISA in this district, courts have found that 33.3% is a
 16 reasonable fee for class counsel. *See e.g., Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723, 2022
 17 WL 425559 (N.D. Cal. Feb. 11, 2022) (approving fees of 33.3% in an ERISA case); *Marshall v.*
 18 *Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCX), 2020 WL 5668935, at *8 (C.D. Cal. Sept.
 19 18, 2020) (approving a one third fee to be reasonable stating “[a]n attorney fee of one third of the
 20 settlement fund is routinely found to be reasonable in class actions”); *Schwartz v. Cook*, No. 15-CV-
 21 03347-BLF, 2017 WL 2834115, at *5 (N.D. Cal. June 30, 2017) (same).
 22

23 Moreover, courts nationwide have found an attorneys’ fees award of 33.3% of the settlement
 24 fund fair and reasonable in ERISA cases. *See, e.g., Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-
 25

10610, 2013 WL 6511860, at *8 (E.D. Mich. Dec. 12, 2013) (holding that plaintiffs’ counsels’ “requested fee is consistent with standard fee awards as a percentage of the fund in ERISA actions which typically award between 30% and 33% on a percentage of the fund fee calculation.”); *Pledger v. Reliance Tr. Co.*, No. 1:15-CV-4444-MHC, 2021 WL 2253497, at *7 (N.D. Ga. Mar. 8, 2021) (awarding attorneys’ fees of one third the common fund because “[t]he percentage used to calculate the requested fee in this case is consistent with experienced attorneys who handle complex ERISA litigation, and has been found reasonable in numerous cases in federal district courts.”); *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2019 WL 7482134, at *7 (S.D. Ohio Sept. 26, 2019) (same); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-22782-CIV, 2017 WL 7798110, at *5 (S.D. Fla. Dec. 18, 2017) (same); *Eslava v. Gulf Telephone Co., Inc.*, No. 04-cv-0297, 2007 WL 4105977, at *2 (S.D. Ala. Nov. 16, 2007) (same); *Ramos v. Banner Health*, No. 15-CV-2556-WJM-NRN, 2020 WL 6585849, at *4-5 (D. Colo. Nov. 10, 2020) (same); *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 771 (D. Md. 2022) (same); *Kelly v. Johns Hopkins Univ.*, No. 16-cv-2835, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020) (same); *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCX), 2020 WL 5668935, at *3 (C.D. Cal. Sept. 18, 2020) (same); *Spano v. Boeing Co.*, No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (same); *Kruger v. Novant Health, Inc.*, No. 14-cv-208, 2016 WL 6769066 at *2 (M.D.N.C. Sept. 29, 2016) (same); *Gordan v. Massachusetts Mut. Life Ins. Co.*, No. 13-cv-30184, 2016 WL 11272044 at *2 (D. Mass. Nov. 3, 2016) (same).

The requested 33.3% fee is reasonable under the percentage of the fund method.

6. Lodestar Cross-Check

“As a final check on the reasonableness of the requested fees, courts often compare the fee

1 counsel seeks as a percentage with what their hourly bills would amount to under the lodestar
2 analysis.” *See Omnivision*, 559 F. Supp. 2d at 1048. Under the lodestar method, the “lodestar should
3 be computed either using an hourly rate that reflects the prevailing rate as of the date of the fee
4 request to compensate Class counsel for delays in payment inherent in contingency-fee cases or
5 using historical rates and compensating for delays with a prime-rate enhancement.” *Stetson v.*
6 *Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). A reasonable hourly rate “must be based on the
7 ‘experience, skill, and reputation of the attorney requesting fees’ as well as ‘the rate prevailing in
8 the community for similar work performed by [comparable] attorneys’” *Rodman v. Safeway Inc.*,
9 2018 WL 4030558, at *6 (N.D. Cal. Aug. 23, 2018) (quoting *Chalmers v. City of Los Angeles*, 796
10 F.2d 1205, 1210–11 (9th Cir. 1986), amended by 808 F.2d 1373 (9th Cir. 1987)).

12 Though the lodestar figure is “presumptively reasonable,” *Cunningham v. Cnty. of Los*
13 *Angeles*, 879 F.2d 481, 488 (9th Cir. 1988), it is well established that a court “may adjust it upward
14 or downward by an appropriate positive or negative multiplier reflecting a host of ‘reasonableness’
15 factors, ‘including the quality of representation, the benefit obtained for the class, the complexity
16 and novelty of the issues presented, and the risk of nonpayment.’” *In re Bluetooth Headset Prod.*
17 *Liab. Litig.*, 654 F.3d 935, 941–42 (9th Cir. 2011) (quoting *Kerr v. Screen Extras Guild, Inc.*, 526
18 F.2d 67, 70 (9th Cir. 1975), abrogated on other grounds by *City of Burlington v. Dague*, 505 U.S.
19 557 (1992)); *see Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008); *Hensley v.*
20 *Eckerhart*, 461 U.S. 424, 433–34 (1983).

23 Here, application of the lodestar method demonstrates that the fees requested by Class
24 Counsel are reasonable, especially given that the requested fee of \$449,955.00 is well-below class
25 counsel’s lodestar of \$1,367,491. Plaintiffs’ Counsel expended a total of 2,128.5 hours of attorney

1 and paralegal time prosecuting these cases (excluding time Counsel will spend finalizing and
 2 administering the settlement). *See* Gyandoh Decl., ¶ 83. Plaintiffs’ Counsel charged \$335-350 for
 3 paralegal and professional staff, \$450-550 for associates, and \$700-950 for partners. *See* Gyandoh
 4 Decl., ¶¶ 77, 87. These rates are within the reasonable range and are comparable to other nationwide
 5 plaintiffs’ firms that prosecute ERISA actions. *Id.* at ¶¶ 88-96; *see also, In re LinkedIn ERISA Litig.*,
 6 No. 20-CV-05704, 2023 WL 8631678 at *10 (N.D. Cal. Dec. 13, 2023) (finding similar rates
 7 charged by Class Counsel “reasonable and commensurate with those charged by attorneys with
 8 similar experience in the market.”); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723, 2022 WL
 9 425559 at *9 (N.D. Cal. Feb. 11, 2022) (finding similar rates reasonable).

11 Class Counsel’s total lodestar for this case is \$1,367,491. *See* Gyandoh Decl. ¶83.³ The
 12 \$449,955 in fees requested here are \$917,536 *less than* Class Counsels’ lodestar. *Id.* In other words,
 13 awarding a one-third percentage of the fund results in Class Counsel recovering only 33% of their
 14 lodestar. *Id.*; *see Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723, 2022 WL 425559 (N.D. Cal.
 15 Feb. 11, 2022) (“[h]ere, Class Counsel do not seek a multiplier; rather, their request for \$1,000,000
 16 is 36 percent of their lodestar of \$2,749,823. The lodestar method establishes the reasonableness of
 17 this request.”).

19 Class Counsels’ fee request results in a negative multiplier. *See* Gyandoh Decl., ¶ 83. “A
 20 negative multiple ‘strongly suggests the reasonableness of [a] negotiated fee.’” *Foster*, 2022 WL
 21 425559, at *11 (quoting *Moreno v. Capital Bldg. Maint. & Cleaning Servs.*, No. 19-cv-07087-
 22 DMR, 2021 WL 4133860, at *6 (N.D. Cal. Sep. 10, 2021)); *Marshall v. Northrop Grumman Corp.*,

25 ³ This total includes the lodestar amounts for co-counsel Peter A. Muhic and liaison counsel Danial
 26 L. Germain. *See* Gyandoh Decl., ¶¶ 81, 82.

No. 16-CV-6794, 2020 WL 5668935 (C.D. Cal. Sept. 18, 2020) (“[class counsel] is requesting less than their lodestar and without a risk multiplier at all, the Court finds that their fee request for one third of the common fund is reasonable.”). Where the fees requested result in a negative multiplier, those fees are considered reasonable under the lodestar crosscheck method. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (“[t]his resulting multiplier of less than one, (sometimes called a negative multiplier) suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by class counsel”).

B. The Court Should Reimburse Plaintiffs’ Counsel for Expenses Incurred

Class Counsel request to be reimbursed for \$150,000 in litigation expenses incurred in prosecuting this case under FED. R. CIV. P. 23(h). As explained below, the actual expenses are \$152,842.11, but class counsel agreed to seek no more than \$150,000 as part of the settlement. As a leading treatise states:

An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved. The equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full reasonable litigation expenses as costs of the suit in contrast to the more narrowly defined rules of taxable costs of suit under Fed. R. Civ. P. 54 (d). . . . The prevailing view is that expenses are awarded in addition to the fee percentage.

Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed.) *see also Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court’s equity power to award costs from a common fund). “Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.” *In re Omnivision*, 559 F. Supp. 2d at 1048; *see also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s

1 fees those out-of-pocket expenses that ‘would normally be charged to a fee paying client.’). Such
 2 costs typically include “photocopying, printing, postage, court costs, research on online databases,
 3 experts and consultants, and reasonable travel expenses.” *Thomas v. MagnaChip Semiconductor*
 4 *Corp.*, 2018 WL 2234598, at *4 (N.D. Cal. May 15, 2018); *Carlin v. DairyAmerica, Inc.*, 380 F.
 5 Supp. 3d 998, 1024 (E.D. Cal. 2019) (reimbursing \$823,904.04 for costs including filing fees,
 6 copying, postage, document storage, depositions, travel, experts, transcripts, computer research,
 7 the cost of the mediator, and common-fund contributions).

9 Plaintiffs’ counsel incurred total expenses of \$152,842.11 including costs related to filing
 10 fees, deposition transcripts, mediation, expert witness, travel, and legal research. *See* Gyandoh
 11 Decl., at ¶¶ 75-76.⁴ All expenses for which reimbursement is sought were necessary for the
 12 prosecution of this litigation and are of the type that would be billed to hourly clients of the firm.
 13 *Id.*; *see also* *See Baird*, 2021 WL 5113030, at *7 (“[t]he Court is satisfied that these costs were
 14 reasonably incurred”). But, pursuant to the Settlement Agreement, Class Counsel agreed to seek a
 15 maximum of \$150,000 in costs. *Id.* at ¶66. Counsel brought this case without guarantee of
 16 reimbursement or recovery, so they had a strong incentive to keep costs at a reasonable level, and
 17 they did so. The expenses are reasonable and should be reimbursed to class counsel.

19 **C. The Requested Case Contribution Awards for the Named Plaintiffs Are**
 20 **Reasonable**

21 Plaintiffs request Class Representatives Mr. Miguel, Ms. Bredlow, Mr. Simonelli, Mr.
 22 Villarreal, Mr. Douillard, Mr. Runyard, Mr. Tracey, and Mr. Ramirez, be granted a Case

23 ⁴ These amounts are exclusive of the cost of the Settlement Administrator which are estimated to be
 24 in excess of \$75,000.00. *See* Gyandoh Decl. ¶ 65; *Baird*, 2021 WL 5113030, at *8 (“Counsel’s
 25 request for reimbursement of expenses does not include the “Administrative Expenses” defined in
 26 the Settlement Agreement, which include, among other things, the costs of the Settlement
 Administrator.”).

1 Contribution Award in compensation for the time and effort they expended in successfully
 2 prosecuting this case to a successful resolution. *See* Gyandoh Decl., ¶67, 109-118. Case
 3 contribution “awards that are intended to compensate class Representatives for work undertaken on
 4 behalf of a class ‘are fairly typical in class action cases.’” *In re Online DVD-Rental Antitrust Litig.*,
 5 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Such awards are “intended to compensate class
 6 representatives for work done on behalf of the class, to make up for financial or reputational risk
 7 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
 8 attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009); *see*
 9 *also Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at *8
 10 (N.D. Cal. May 11, 2018) (granting case contribution awards based on class counsel’s attestation as
 11 “to each class representative’s cooperation and work.”); *Bellinghausen v. Tractor Supply Co.*, 306
 12 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases showing service awards typically range from
 13 \$2,000–\$10,000); *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778 JCS, 2011 WL 1230826, at
 14 *31 (N.D. Cal. Apr. 1, 2011) (“It is well-established in this circuit that named plaintiffs in a class
 15 action are eligible for reasonable incentive payments, also known as service awards.”).

18 Each Plaintiff has submitted a declaration in support of their request for case contribution
 19 awards. The declarations are attached to the Gyandoh Declaration as **Exhibit 8** (Miguel
 20 Declaration), **Exhibit 9** (Bredlow Declaration), **Exhibit 10** (Simonelli Declaration), **Exhibit 11**
 21 (Villarreal Declaration), **Exhibit 12** (Douillard Declaration), **Exhibit 13** (Runyard Declaration,
 22 **Exhibit 14** (Tracey Declaration), and **Exhibit 15** (Ramirez Declaration). These Declarations
 23 demonstrate how each Plaintiff actively participated in the case by providing relevant documents to
 24 their Counsel, reviewing case related filings and documents, and monitoring the case through
 25

1 contact with Counsel, and, in the cases of Plaintiffs Miguel and Bredlow, prepared for and sat for
 2 depositions. The participation of the Named Plaintiffs was crucial in prosecuting the case and
 3 bringing it to settlement. *See* Gyandoh Decl., ¶109.

4 Accordingly, Plaintiffs request that the Court approve a contribution award in the amount of
 5 \$10,000 Plaintiffs Miguel and Bredlow, and \$7,500 to Plaintiffs Simonelli, Villarreal, Douillard,
 6 Runyard, Tracey, and Ramirez. Class Counsel seeks an increased case contribution award for
 7 Plaintiffs Miguel and Bredlow because they both prepared for and sat for depositions. *See* Gyandoh
 8 Decl., ¶¶ 111, 112. These awards are within the range of contribution awards approved in ERISA
 9 class action cases in this district and the 9th Circuit. *See In re LinkedIn ERISA Litig.*, No. 20-CV-
 10 05704, 2023 WL 8631678 at *11 (N.D. Cal. Dec. 13, 2023) (approving case contribution awards of
 11 \$12,500); *Baird*, 2021 WL 5113030, at *8 (approving case contribution awards of \$10,000).;
 12 *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794, 2020 WL 5668935 at *10 (C.D. Cal. Sept.
 13 18, 2020) (approving case contribution awards of \$25,000); *Urakhchin v. Allianz Asset Mgmt. of*
 14 *Am., L.P.*, No. 815-CV-01614, 2018 WL 8334858, at *8 (C.D. Cal. July 30, 2018) (approving case
 15 contribution awards of \$7,500); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698,
 16 2018 WL 2183253, at *6 (N.D. Cal. May 11, 2018) (approving case contribution awards of \$7,500);
 17 *Waldbuesser v. Northrop Grumman Corp.*, No. CV 06-6213, 2017 WL 9614818 (C.D. Cal. Oct. 24,
 18 2017) (approving case contribution awards of \$25,000).

19 **V. CONCLUSION**

20 Plaintiffs respectfully submit that the Court award attorneys' fees in the amount of
 21 \$449,955, approve the reimbursement of litigation expenses in the amount of \$150,000, and
 22 approve Case Contribution Awards in the amount \$10,000 for Plaintiffs Gregor Miguel and
 23

1 Amanda Bredlow, and in the amount of \$7,500 for Plaintiffs Chris Simonelli, David Villarreal,
2 Joseph Douillard, Marc Runyard, Mark Tracey and Robert Ramirez.

3 Dated: November 25, 2024.

CAPOZZI ADLER, P.C.

4 /s/ Mark K. Gyandoh

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PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES AND CASE CONTRIBUTION AWARDS AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF

3:20-CV-01753-MMC

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2024, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

By: Mark K. Gyandoh

Mark K. Gyandoh, Esq.